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ICC Monitoring and
Outreach Programme

FIRST OUTREACH REPORT

June 2006

**An International Bar Association
Human Rights Institute Report**



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Introduction

In contrast to the ad hoc criminal tribunals, the International Criminal Court (ICC) is a permanent institution with a multiple and diverse range of constituents from the 100 states parties to stakeholders and interested parties in ‘situation’ countries to the general public. In fulfilling its mandate to end impunity for ‘the most serious crimes of concern to the international community as a whole’ and to ‘guarantee lasting respect for and the enforcement of international justice’,¹ the Court must ensure that it informs, updates and engages with its constituents. In this respect, the Court has already underscored the integral importance of external communications in stating that ‘external communications, public information and outreach are critical to delivering public and transparent justice, securing necessary support for the Court, and ensuring the effective impact of the Court’.²

In October 2005, the IBA started a new ICC Monitoring and Outreach Programme funded by the MacArthur Foundation. On the monitoring side, the IBA has a representative in The Hague who monitors the work and proceedings of the ICC, focusing in particular on issues affecting the fair trial rights of the accused. The outreach component to the Programme aims to deepen understanding of the place of the ICC both within the broader landscape of international justice and particular contexts. In this respect, the IBA works in partnership with bar associations, lawyers and civil society organisations in key countries including India, Sudan, and Uganda; with bar associations on the role of lawyers in advancing ratification and implementation of the Rome Statute; and holds sessions on the ICC at regional and international IBA conferences.

In April 2006, the first Monitoring Report was published under the ICC Monitoring and Outreach Programme. As the first Outreach Report, Part I first discusses the core importance of external relations, public information and outreach within the policy and operation of the ICC before outlining the Court’s current approach to external communications. The second half of the Report provides feedback from consultative workshops organised by the IBA in partnership with the Uganda Law Society (ULS) in Kampala and the Bar Association of India, the Criminal Justice Society, and the Indian Society of International Law in Delhi.

¹ Preamble to the Rome Statute.

² ICC, *Report on the Activities of the Court*, ICC-ASP/4/16 (2005) at para 17.

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Part I

External communications and the Court's current approach

The Court uses the term 'external communications' to encompass the following:

- external relations: 'contacts with governments, international organisations and other major actors';
- public information: 'efforts to disseminate messages about the Court to wide, diffuse audiences'³; and
- outreach: 'a process of establishing a sustainable, two-way communication between the Court and communities affected by situations that are subject to investigations and proceedings'.⁴

As an international court, the interplay between external relations, public information and outreach is of particular importance. Although the ICC's investigations are currently mandated to focus on situations in the Democratic Republic of the Congo (DRC), Sudan and Uganda, the Court is likely to investigate other situations in the future. In this respect, the general approach taken to external relations and public information will already contribute to the formation of opinion on the ICC within future situation countries and consequently will either enhance or hamper receptivity and cooperation with the Court.

Highlighting innovations, and responding to distortions and misconceptions

In all three areas, external communications present an essential element of the ICC's work in explaining the particularities of the Court's mandate and functioning as well as countering and responding to distortions and misrepresentations advanced by external third parties.

The establishment of the first permanent international criminal court to hold individuals responsible for the 'most serious crimes of international concern'⁵ presents a landmark achievement in the history of international justice. In order to fully implement the mandate of the Court as an institution aimed at ending impunity, all potential stakeholders, beneficiaries, interested parties as well as the general public must understand its reach and role within the international criminal justice system. In this respect, the Rome Statute contains a number of innovative provisions. For example, it specifically acknowledges gender-based crimes and crimes against children within the definitions of genocide, crimes against humanity and war crimes as well as providing for the participation of victims in the Court proceedings.⁶ In this respect, external communications play an essential role in ensuring that such achievements in international justice do not remain on paper but are implemented in practice.

³ *Reports of the Committee on Budget and Finance*, ICC-ASP/4/32 (2005) at paras 43-44.

⁴ Statement made by President Philippe Kirsch, www.icc-cpi.int/library/asp/060323_Compilation_of_Statements.pdf (March 2006).

⁵ Article 1 of the Rome Statute.

⁶ See, *IBA Monitoring Report: International Criminal Court* (April 2006) at 8 (discussing the recent decisions on victim participation).

As a corollary, the experience of the ad hoc tribunals demonstrates the potentially adverse impact a lack of a strong external communications strategy can have on the successful implementation of the Court's mandate. The ad hoc tribunals failed to establish outreach programmes at the outset, an omission which resulted in extensive distortions and misrepresentations of the purpose and functioning of the tribunals in the territories covered.⁷ Indeed, the work of the International Criminal Tribunal for the former Yugoslavia (ICTY) was 'frequently politicised and used for propaganda purposes by its opponents', and seen as 'remote and disconnected from the population'.⁸ As discussed below in relation to the lack of an extensive outreach campaign by the Court in Uganda, the ICC already faces similar challenges. In this regard, it is of key importance that extensive outreach campaigns are now initiated in all current situation countries, and provision made for adequate resources to be allocated to outreach when future investigations begin.

As the Court has global reach, however, and relies on the support and cooperation of states, its role in countering distortions and misrepresentations extends further than the situation countries to cover external relations and public information as a whole. External relations and public information also constitute important tools in responding to opposition to the ICC by powerful states. In particular, their position may deter less powerful governments from supporting the Court and its underlying objectives, and inhibit traditionally marginalised groups from accessing the Court.

As a number of non-governmental organisations (NGOs), universities, professional organisations and government bodies are engaged in public information and outreach activities, feedback could be provided to the Court on key areas that are subject to distortion, misrepresentation and confusion. This may assist the Court in identifying specific areas on which to respond as well as enhancing the efficacy of external communications strategies by tailoring activities to meet the needs and interests of the particular target group rather than only providing general information on the ICC.

Maximising the principle of complementarity

One of the central shortcomings of the ICTY has been its failure to impact on national judicial processes, beyond sporadic engagement with judges and lawyers through its outreach programme.⁹ As one commentator notes in his discussion of the ICTY, 'there has been no systematic attempt to impart the tribunal's technical expertise'.¹⁰ Yet, in both the completion strategies of the ICTY and the International Criminal Tribunal for Rwanda (ICTR), a number of cases have been, and will

⁷ Distorted information about the ICTY was one of the driving reasons behind the establishment of an Outreach Programme at the ICTY in 1999 by Judge McDonald. See, David Tolbert, 'The Evolving Architecture of International Law: The International Criminal Tribunal for the Former Yugoslavia: Unforeseen Successes and Foreseeable Shortcomings', (2002) 26 *Fletcher F World Aff* 7 at 13 (characterising the result as 'the tribunal became a political football for certain unscrupulous politicians in the region who cynically manipulated these misunderstandings').

⁸ See, General Assembly, Security Council, *Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia Since 1991*, A/54/187; S/1999/846 (1999) at 148.

⁹ Tolbert, *supra* n 7 at 14.

¹⁰ *Ibid.*

continue to be, transferred to the respective national judiciaries.¹¹ Recognising this disjuncture, the ICTR has located its outreach programme within its completion strategy as a means of assisting the development of ‘courts in the region capable of prosecuting war crimes fairly’.¹²

In contrast to the ad hoc tribunals, the principle of complementarity of the ICC with national criminal jurisdictions presents one of the core elements of the Rome Statute.¹³ The principle reaffirms the obligation on national criminal jurisdictions to hold individuals responsible for international crimes to account, and deepens the impact the ICC can have on combating impunity. In order to avoid a case before the ICC, states must ensure that their legal system is willing and able to ‘genuinely carry out the investigation or prosecution’ of crimes falling under the Rome Statute.¹⁴ In this respect, the principle of complementarity acts as a trigger to strengthening national judicial systems. Even in situation countries, the principle of complementarity is relevant. The ICC will only ever have the capacity to investigate and prosecute a small number of individuals. However, the Court will inevitably operate in a context in which many more individuals are responsible for violations of international law. As a result, the combination of ICC proceedings, the principle of complementarity, and implementation of the Rome Statute into domestic law can create a momentum towards building the capacity of the domestic legal system to deal with the ‘most serious crimes of international concern’. However, in order to fully realise the complementarity principle, the Court must engage with domestic legal communities. As one commentator notes:

‘... the ICC is in a position to interact much more extensively with states regarding the domestic prosecution of war crimes. Some may argue that the ICC Statute, however, does not explicitly call upon the ICC to do developmental work with domestic authorities on war crimes prosecutions. While this is true, given the relationship State Parties will have with the ICC, a strong argument can be made that such assistance is within the spirit of the ICC Statute and thus can be legitimately provided.’¹⁵

11 Security Council, *Letter Dated 5 December 2005 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations on International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council*, S/2005/782 (2005) at paras 42-43; Security Council, *Letter Dated 25 May 2005 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991, Addressed to the President of the Security Council*, S/2005/343 (2005).

12 General Assembly and Security Council, *Report of the International Criminal Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, A/58/27; S/2003/829 (20 August 2003) at para 285; see also, General Assembly, Security Council, *Tenth Annual Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 January 2004*, A/60/229; S/2005/534 (2005) at 63 (discussing the ‘training of Rwandan jurists, advocates and human rights practitioners’ as ‘one of the cornerstones’ of the Outreach Programme).

13 See, the Preamble to the Rome Statute and Articles 1, 17, 18, and 19.

14 Rome Statute Article 17(1)(a).

15 Tolbert, *supra* n 7 at 17.

Outreach in situation countries

Victim participation and reparation

The focus on victims' rights presents one of the most innovative aspects of the Rome Statute. Article 75 enables the Court to make reparations to victims,¹⁶ and Article 68(3) provides that '[w]here the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court'. Victims may exercise their right to participate in the proceedings directly or through a legal representative. This right is consistent with general principles under international law. In fact, Articles 68 and 75 of the Rome Statute are cited in the Preamble to the recently-adopted Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law¹⁷ (Basic Principles on Reparations) as providing for a 'right to a remedy for victims of violations of international human rights law'.

The Victims and Witnesses Unit of the Registry is responsible for informing victims and witnesses of 'their rights under the Statute and the Rules', and for 'ensuring that they are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests'.¹⁸ In the contexts in which the ICC operates, a large number of individuals and communities may define themselves as victims. In this respect, the Court must conduct an extensive and diverse outreach campaign in order to make the right to participate before the ICC effective for two reasons. First, in order to exercise the right to participate, victims must be aware of the existence of that right. In this respect, the United Nations' Set of Principles to Combat Impunity, and the Basic Principles on Reparations, are instructive. Principle 33 of the Set of Principles to Combat Impunity directs the 'widest possible publicity' of 'reparation procedures', and Principle 12(a) of the Basic Principles on Reparations requires the dissemination of information of 'all available remedies for gross violations of international human rights law and serious violations of international humanitarian law'.¹⁹ The Independent Expert tasked with updating the Set of Principles to Combat Impunity²⁰ explains the purpose of Principles 33 and 12(a) as:

'[T]o make the right to a remedy *effective* by undertaking outreach programmes aimed at informing as many victims as possible of procedures through which they may exercise this fundamental right . . . This . . . should be understood to include other appropriate measures for identifying potential beneficiaries of reparation programmes that may, under some circumstances, be more effective than dissemination through public media.'

16 However, the trust fund established to 'channel money to victims' (www.icc-cpi.int/vtf.html) continues to be under-resourced. See, *The Report to the Assembly of States Parties on the Activities and Projects of the Trust Fund for Victims for the Period 16 July 2004 to 15 August 2005*, ICC-ASP/4/12 (29 September 2005).

17 Adopted by the General Assembly in Resolution 60/147 on 16 December 2005.

18 Rule 16(2) of the Rules of Procedure and Evidence sets out the responsibilities of the Victim and Witnesses Unit of the Registrar towards victims and witnesses.

19 Notably, the Preamble to the Basic Principles on Reparation provides that the principles 'do not entail new international or domestic legal obligations but identify mechanisms, modalities, procedures and methods for the implementation of existing legal obligations'.

20 *Report of Diane Orentlicher, Independent Expert to Update the Set of Principles to Combat Impunity – Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, E/CN.4/2005/102/Add.1 (2005).

Moreover, in keeping with the discussion above on the innovative aspects of the Rome Statute in acknowledging gender-based crimes, the Independent Expert notes that:

‘Recent experience has also highlighted the need to ensure that victims of sexual violence know that the violations they endured are included in reparation programmes and, more generally, to ensure that victims belonging to traditionally marginalised groups are able effectively to exercise their right to reparations. Besides ensuring the effective implementation of reparation programmes, disseminating information about applicable procedures may advance two core aims of reparation programmes in situations entailing the restoration of or transition to democracy and/or peace – providing recognition to victims as citizens who bear equal rights *vis-à-vis* other citizens and facilitating their trust in State institutions.’²¹

Secondly, the right to participate is not absolute, but victims must make an application to the Court. In managing expectations on the role and accessibility of the Court, victims must understand the significance, advantages and risks involved in participating in the Court proceedings, as well as the potential that an application to participate may not be approved. Similarly, the same information must be imparted with regard to the principles on reparation contained in the Rome Statute.

Finally, as participation is envisaged as primarily taking place through legal representation, outreach to the legal community based in situation countries presents an essential component to making the right to reparation effective.

Outreach to society as a whole

In a 2004 Report on the United Nations’ Set of Principles to Combat Impunity, outreach programmes are referred to as essential in order that:

- a) citizens are aware of and understand important developments in respect of prosecutions for serious violations of human rights;
- b) citizens understand why the prosecutor has brought charges for some offences but not others;
- c) judicial officials are aware of how human rights prosecutions are perceived by citizens; and
- d) public perceptions of prosecutions are not distorted either as a result of lack of information or because judicial officials have failed to counter revisionist interpretations of prosecutions.²²

In this regard, outreach programmes play a crucial role in ensuring that society as a whole understands and has access to information on the proceedings before the ICC, particularly given the Court’s location in The Hague.

With respect to the grounding of outreach programmes to broader society in international law, the jurisprudence of the Inter-American Court of Human Rights is particularly instructive. In the *Bámaca Velásquez* case, the Court held that ‘[s]ociety has the right to know the truth regarding such

²¹ Commission on Human Rights, *Promotion and Protection of Human Rights: Impunity: Report of the Independent Expert to Update the Set of Principles to Combat Impunity*, E/CN.4/2005/102 (2005) at para 60.

²² *Independent Study on Best Practices, Including Recommendations, to Assist States in Strengthening their Domestic Capacity to Combat All Aspects of Impunity*, by Diane Orentlicher, E/CN.4/2004/88 (2004) at para 40.

crimes, so as to be capable of preventing them in the future'.²³ As a result, not only was the state under a duty to investigate but also to 'publicly divulge the results of said investigation'²⁴ both in the *Official Gazette* and also a daily newspaper with 'national circulation'.²⁵ In the *Myrna Mack Chang v Guatemala* case, the Inter-American Court held that:

'... every person, including the next of kin of the victims of grave violations of human rights, has the right to the truth. Therefore, the next of kin of the victims and society as a whole must be informed of everything that has happened in connection with said violations. This right to the truth has been developed by International Human Rights Law; recognised and exercised in a concrete situation, it constitutes an important means of reparation. Therefore, in this case it gives rise to an expectation that the State must satisfy for the next of kin of the victim and Guatemala society as a whole.'²⁶

The Secretary-General of the United Nations has interpreted these cases as demonstrating the 'preventative and reparatory role that disclosure of truth plays for family members and society as a whole'²⁷ and again underscores the central role of outreach in fulfilling the ICC's mandate.

Although the Inter-American cases direct the state concerned to undertake the duty to disseminate information on the findings of particular investigations, the resistance of the Serbian and Rwandan governments to the ICTY and the ICTR respectively demonstrates that international criminal tribunals cannot rely on the states concerned to portray the structure, mandate, functions and findings of the ICC objectively and accurately. As a result, the ICC must take the lead in public information and outreach.²⁸ As noted in the Annual Report of the ICTY:

'... the Tribunal is unlike any other Court. National courts exist within each state's criminal justice system and an institutional framework that supports the conduct of criminal proceedings. Within the international community, there are no such mechanisms to ensure the dissemination and interpretation of the work of the Tribunal. The gap thus created between justice and its beneficiaries – victims of the conflict – is exacerbated by the Tribunal's physical location far from the Former Yugoslavia.'²⁹

23 *Bámaca Velásquez v Guatemala*, Inter-American Court of Human Rights, Judgment of 22 February 2002 at para 77. In *El Caracazo v Venezuela*, Inter-American Court of Human Rights, Judgment of 29 August 2002, the Court found that the results of investigations 'must be made known to the public, for Venezuela society to know the truth' at para 118.

24 *Bámaca Velásquez* at para 78 (emphasis added).

25 *Ibid.*, at para 106(3).

26 *Myrna Mack Chang v Guatemala*, Inter-American Court of Human Rights, Judgment of 25 November 2003 at para 274 (emphasis added).

27 Report of the Secretary-General to the Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616 (2004) at para 18.

28 Michael P Scharf and Ahran Kang, 'Milosevic and Hussain on Trial: Panel 3: The Trial Process: Prosecution, Defense and Investigation: Errors and Missteps: Key Lessons the Iraqi Special Tribunal Can Learn from ICTY, ICTR and SCSL' (2005) 38 *Cornell Int'l LJ* 911 at 916-7.

29 General Assembly and Security Council, *Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, A/54/187; S/1999/846 (25 August 1999) at 147.

Moreover, as noted in the report on the updating of the impunity principles, engagement with affected communities ensures ‘that policies for combating impunity are themselves rooted in processes that ensure public accountability’.³⁰

Tailoring outreach programmes to particular contexts

Despite the ICC’s global reach, its work in situation countries takes place within particular and complex contexts. While in all areas of external communications, the Court and other organisations must explain the general mandate, structure and functioning of the ICC, the experience of the ad hoc tribunals as well as feedback from the IBA workshop in Uganda, discussed below, highlight the importance of locating the ICC within the context of the ‘situation’ under investigation.³¹ In this respect, outreach must respond to particular issues, themes, and questions raised in situation countries if the Court is to succeed in realising its objective to combat impunity.

Indeed, the Report of the Independent Expert on updating the UN Set of Principles to Combat Impunity notes the importance of ‘national consultations’ in securing ‘sustainable justice for the future, in accordance with international standards, domestic legal traditions and national aspirations’.³² The UN Secretary-General has also pointed out that accountability for crimes of international concern ‘must . . . eschew one size fits all formulas and the importation of foreign models and, instead, base our support on national assessments, national participation and national needs and aspirations’.³³ On this basis, support for the ICC will be enhanced if the Court, through its outreach programme, engages with the dynamics within the situation countries where its investigations are taking place. In contrast, if the Court does not adopt such an approach, the experience in Uganda so far indicates the way in which a momentum can be built in opposition to the Court due to the lack of an outreach programme tailored and responsive to the particular context.

In this respect, outreach programmes must be seen as two-way processes which adequately afford space and seriously engage with a broad range of actors, stakeholders and interest groups within the situation countries. Such a two-way process can also prove useful to other organs of the Court in the fulfilment of their responsibilities within the situation countries.

External communications at the Court to date

Rule 13 of the Rules of Procedure and Evidence provides that Registrar has:

‘. . . the responsibility to receive, obtain and provide information, to establish channels of communication with States and to serve as the channel of communication between the Court and States, Inter-governmental Organisations and Non-Governmental Organisations.’

30 Commission on Human Rights, *supra* n 21 at para 7.

31 This is an area in which the ICTY Outreach Programme has also been criticised. See, Laurel E Fletcher, ‘From Indifference to Engagement: Bystanders and International Criminal Justice’ (2005) 26 Mich J Int’l L 1013 at 1043, 1089.

32 *Supra* n 21 at para 7 (citing the Report of the Secretary-General to the Security Council, *supra* n 27 at para 17).

33 Secretary-General Report, *supra* n 27, in summary.

Although the Office of the Prosecutor and the Presidency also engage in external communications activities, Rule 13 highlights the central role of the Registry in designing, coordinating and implementing external communications.

External relations

Senior representatives of all organs of the Court have made substantial efforts to present aspects of the Court's work in public forums.

Public information

In communicating with the general public, press statements and general media work as well as the Court's website, play an important role in providing clear and up-to-date information, particularly as the investigations and proceedings progress. In this respect, the ICC's website is currently being reorganised and simplified in order to assist users in navigating the various sections.

Outreach

To date, the Court has conducted outreach activities in two of the three situation countries: Uganda and the DRC. In the DRC, the Registry has held training for senior judges, magistrates and judicial personnel in Kinshasa; 'information sessions' on the ICC with human rights organisations; a seminar on victim and witness protection in partnership with Congolese Initiative for Justice and Peace, Human Rights Watch and REDRESS;³⁴ and a seminar on victims' rights in Lubumbashi with Association Contre Le Impunité pour les Droits Humains.³⁵ In September 2005, the OTP and the Registry held a seminar in Kinshasa on the Court's methodology in investigating cases and victim and witness protection; and in December 2005, the Registry held a workshop with university students in Kinshasa on the ICC generally. Finally, in February of this year, the ICC held a workshop with human rights organisations in Bunia and Goma with a view to exploring possible collaboration on the ICC, particularly with regard to victim participation. The outreach activities in Uganda are discussed below in the section on Uganda. No outreach activities have been undertaken by the Court in Sudan as of yet.

The ICC has faced criticism for its lack of substantial outreach activities in the current situation countries. For example, in the Ugandan context, some commentators have argued that the five arrest warrants were issued before sufficient information on the Court had been disseminated. Towards the end of March, however, the Court held and participated in a number of workshops on the ICC in Kampala and northern Uganda, and plans to increase its outreach activities in the future. While these plans are welcome, parallel activities should also be developed in the DRC and Sudan, using a range of tools appropriate to the particular contexts in which the investigations are placed. Moreover, on the basis of these experiences, the Court should prioritise outreach at the outset of future investigations.

³⁴ All of these workshops were held in April 2005.

³⁵ July 2005.

At the most recent Assembly of States Parties (ASP) meeting of the ICC, a number of states underscored the importance of outreach.³⁶ Based on the experience of the ad hoc tribunals and the Special Court for Sierra Leone, Germany stated that outreach ‘is not a luxury addition, but a necessity’.³⁷ Sierra Leone also noted that:

‘For the ICC to have impact on peace, to achieve its mandate and potential in contributing to conflict resolution and prevention and restoration of the rule of law, the ICC must have effective outreach to ensure its mandate, mission and limitations are understood by its ultimate clients, the population affected by crimes within the jurisdiction of the Court . . . getting the population in interactive dialogue about the Court in not a luxury, it is absolutely essential for the system to work at all levels.’³⁸

However, the Court currently has an insufficient budget for external communications as a whole. In this respect the Court, and in particular the Registry must be afforded adequate funding and personnel in The Hague, New York and its field offices in order to implement an effective public information and outreach strategy as an integral and core component of the Court’s work.³⁹ At the ASP meeting, the states passed a resolution recognising the importance of outreach but requested the Registry to present a comprehensive plan for its outreach activities to the next ASP meeting in November of this year in order to consider revising the budget allocated to outreach.⁴⁰

The Public Information and Documentation Section and the Victim and Witnesses Unit within the Registry have engaged in outreach activities in addition to the Office of the Prosecutor (OTP). In order to ensure close coordination, the Court adopted an integrated strategy on external relations, public information and outreach in July 2005 for which the standing group on external communications, composed of members from all of the organs of the Court, is responsible.⁴¹ However, as this strategy is not yet publicly available, the distinction between the outreach strategies of the different sections of the Court, particularly between the OTP and the Registry, is not always clear, although the Court plans to include a summarised version on its website in the near future. The lack of information on the Court’s website outlining programmes, agendas or commentary on the Court’s past, current and planned outreach activities, may have also contributed to this lack of clarity. However, the Court is in the process of creating a dedicated section to outreach on its website. As international and national NGOs and civil society are also conducting outreach activities on the Court, a clear mapping of the Court’s outreach activities will greatly assist with planning and

36 See, statements made by Norway and Lao People’s Democratic Republic, Plenary Minutes prepared by CICC (3 December 2005); Republic of Korea, Plenary Minutes prepared by CICC (2 December 2005).

37 Germany, Plenary Minutes (2 December 2005).

38 Sierra Leone (2 December 2005).

39 See, Jonathon O’Donohue (Amnesty International), ‘Proposed 2006 Budget for the ICC: What Impact for Victims?’ (October 2005) Issue No 4, *Victims’ Rights Working Group* at 2.

40 *Strengthening the International Criminal Court and the Assembly of States Parties*, Resolution ICC-ASP/4/Res 4 (2005) at para 22 (‘Recognises the importance for the Court to engage communities in situations under investigation in a process of constructive interaction with the Court, designed to promote understanding and support for its mandate, to manage expectations and to enable those communities to follow and understand the international criminal justice process and, to that end, encourages the Court to intensify such outreach activities and requests the Court to present a detailed strategic plan in relation to its outreach activities to the Assembly of States Parties, in advance of its fifth session’).

41 *Reports of the Committee on Budget and Finance*, ICC-ASP/4/32 (2005) at paras 43-44.

coordination of activities both thematically and in terms of proximity in time.⁴² In developing the outreach strategy as a whole, clarification by the ICC on aspects of outreach that it considers most appropriate for the Court to conduct itself, for example: priority locations; key participants/interest groups; and themes and strategies/tools, would also assist external organisations in developing their own outreach activities.

⁴² The IBA plans to create a section on its own ICC Monitoring and Outreach Programme website within which organisations engaged in outreach activities can upload relevant materials.

Part II

Feedback from consultative workshops in Uganda, February 2006

The investigations and five arrest warrants issued by the ICC in northern Uganda are placed within a context described by the UN Under-Secretary for Humanitarian Affairs, Jan Egeland, in April 2006 as a 'horrendous humanitarian situation',⁴³ reiterating his previous statement that 'Northern Uganda remains the world's greatest neglected emergency'.⁴⁴ In a recent report by Civil Society Organisations for Peace in Northern Uganda (CSOPNU), a coalition of more than 50 Ugandan and international NGOs, the situation in northern Uganda was characterised as:

'... a reality in which almost eight per cent of Uganda's population have been forced to live in extreme poverty and suffering, ravaged by a war that targets civilians and children; in which 1.8 million people are forced to live in squalid and life-threatening conditions, displaced from their homes by violence and coercion; in which tens of thousands of children are unable to sleep in their bed for fear of abduction; in which violence, torture and abuse have become normal; in which livelihoods have been destroyed, cultural norms have collapsed, and where hope for the future of an entire generation has withered away.'⁴⁵

Background to the ICC investigations and arrest warrants⁴⁶

Uganda ratified the Rome Statute on 14 June 2002 but in June 2003, signed a bilateral immunity agreement with the United States to prevent the surrender or transfer of nationals of either country to the ICC.⁴⁷ Implementing legislation in the form of the International Criminal Court Bill 2004⁴⁸ is currently before Parliament. However, consideration of the Bill has been temporarily stayed pending a petition to the Constitutional Court of Uganda challenging the constitutionality of ratification of the Rome Statute on the basis that it was signed by the Executive rather than approved by Parliament.⁴⁹ The petitioners argue that as the treaty is of 'particular constitutional significance and ... concerned with securing of peace for Uganda' only Parliament could have ratified the Rome Statute.⁵⁰ The petition concludes that '[t]o the extent that the International Criminal Court and the Government of Uganda have carried out any activities in Uganda or

43 Security Council Consultations, *Humanitarian Challenges in Africa: Northern Uganda and Sudan*, Statement by Jan Egeland, Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator (20 April 2006).

44 Briefing Notes to the Security Council, *Humanitarian Emergencies in Africa*, Statement by Jan Egeland (21 October 2004).

45 CSOPNU (Civil Society Organisations for Peace in Northern Uganda), *Counting the Cost: Twenty Years of War in Northern Uganda*, March 2006 at 7.

46 Summary document, www.icc-cpi.int/library/cases/ICC_20051410-056-1_English.pdf.

47 The agreement provides that: 'Persons of one Party present in the territory of the other shall not, absent the expressed consent of the first Party (a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or (b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender or transfer to the International Criminal Court.'

48 Bill No 10, The International Criminal Court Bill 2004.

49 *John Magezi, Judy Obitre-Gama and Henry Onoria v Attorney-General*, Constitutional Petition No 10 of 2005 in the Constitutional Court of Uganda at Kampala (filed 29 July 2005).

50 *Ibid*, at para 17.

elsewhere on the basis that Uganda is a State Party to the Rome Statute, those acts have no binding legal effect'.⁵¹

On 16 December 2003, the Ugandan Government referred the situation of northern Uganda to the ICC. This referral was announced by the Prosecutor, Luis Moreno Ocampo, in a joint press conference with President Museveni in London on 29 January 2004 and the Prosecutor began investigations in July 2004. On 8 July 2005, arrest warrants were issued, under seal, against five LRA leaders: J Kony, V Otti, R Lukwiya, O Odhiambo and D Ongwen.⁵² D Ongwen was reported to have been killed on 2 October 2005, and none of the others have yet been detained.

Towards the end of 2004, a series of attempts were made to reinvigorate the peace process in Uganda. The Government announced a unilateral ceasefire and the Minister of Interior, Ruhakana Rugunda, held a meeting with the Lords' Resistance Army (LRA) spokesperson, Sam Kolo. However, the Government later renounced the ceasefire after the LRA did not sign a draft memorandum. Both sides accused the other of a lack of seriousness towards the peace process.⁵³ In the same year, the Minister of Defence, Amama Mbabazi, stated that the Government would investigate any allegations of violations under the Rome Statute by the Uganda People's Defence Force (UPDF) itself. President Museveni is also reported to have claimed that Uganda could withdraw the referral to the ICC if the LRA re-engaged in the peace process. Amnesty International responded stating: '[t]here is not a scrap of evidence in the drafting history or in commentaries by leading international law experts on the Rome Statute suggesting that once a state party has referred a situation it can "withdraw" the referral'.⁵⁴

More recently, in a recorded interview with the southern Sudanese Vice-President, Riek Machar, on 2 May 2006, the LRA commander, Joseph Kony, indicated that the LRA was willing to return to peace talks.⁵⁵ According to a Ugandan newspaper, the Ugandan Government issued a statement giving Kony, 'a new ultimatum of 60 days of up to July this year "to peacefully end terrorism"' and would 'guarantee [Kony's] safety', if he 'got serious about a peaceful settlement'.⁵⁶ On how these recent developments impact the ICC arrest warrants, an ICC spokesperson commented that, 'We don't have anything to do with those negotiations. It is up to the governments of Uganda, Sudan and Democratic Republic of Congo to comply with their legal obligations. We have agreements with the three states. They are obligated to give effect to the arrest warrants, and we are confident that they will honour their joint commitment to do so'.⁵⁷

51 *Ibid*, at para 39.

52 The warrants remained under seal until 13 October 2005, at which point they were made public in redacted form. Kony: www.icc-cpi.int/library/cases/ICC-02-04-01-05-53_English.pdf; Otti: www.icc-cpi.int/library/cases/ICC-02-04-01-05-54_English.pdf; Lukwiya: www.icc-cpi.int/library/cases/ICC-02-04-01-05-55_English.pdf; Odhiambo: www.icc-cpi.int/library/cases/ICC-02-04-01-05-56_English.pdf; Ongwen: www.icc-cpi.int/library/cases/ICC-02-04-01-05-57_English.pdf

53 See, UN Office for the Coordination of Humanitarian Affairs, 'Uganda Waiting for Elusive Peace in the War-Ravaged North', *IRIN News* (24 April 2006).

54 See, Amnesty International, *Uganda: Government Cannot Prevent the International Criminal Court from Investigating Crimes*, Press Release, AI Index: AFR 59/008/2004 (16 November 2004).

55 'Uganda: I am not a Terrorist, I am a Freedom Fighter, Says Kony', *All Africa.Com* (25 May 2006).

56 'Museveni gives Joseph Kony Final Peace Offer', *New Vision* (17 May 2006).

57 Alfred Wasike, 'I'm Not a Terrorist, Says Kony', *New Vision* (25 May 2006).

Responses to the ICC in Uganda

A number of international organisations welcomed the announcement of investigations and arrest warrants, emphasising the importance of the ICC's role as part of a broader strategy to end impunity for war crimes and crimes against humanity in northern Uganda, but underlining the need to investigate all sides to the conflict, including allegations against Government forces.⁵⁸ Equally, however, both domestic and international organisations have voiced concern about the timing and process by which the ICC investigations and arrest warrants were issued in Uganda. For example, at the point at which the ICC announced the initiation of an investigation, the Refugee Law Project (RLP) based at Makerere University in Kampala, issued a position paper, stating that the referral to the ICC:

'... shifted public and international discourse from the plight of the people affected by the war and the need to end it through peaceful means to discourses on justice and punishing perpetrators of crimes against humanity and war crimes... [and] exerted pressure on neighbouring countries to support the Government in the search for the top leadership of the LRA.'⁵⁹

Once arrest warrants had been issued, Emma Naylor, the former country coordinator for Oxfam, highlighted the range of concerns held by domestic and international organisations based in Uganda:

'This war has already lasted 19 years and an entire generation has never known peace. We are desperate for an end to this conflict. Many people dream of the day when the rebel leaders will have to stand trial for the crimes they have committed. We are really worried that this dream won't become a reality... For two decades it has been impossible to apprehend the rebel leaders. The communities that we work with are already asking how the arrest warrants will be served. There is a lot of confusion and it's fast turning to fear... Over 80 per cent of LRA fighters are abducted children held against their will, terrorised and forced to fight... Our biggest fear is that arrest warrants will be an excuse for military forces to go in all guns blazing and these children will be killed or injured in a hail of bullets.'⁶⁰

The coexistence of a blanket amnesty process with the ICC investigations and arrest warrants reflects another area of concern, particularly as prominent individuals and organisations in northern Uganda lobbied for the adoption of the Amnesty Act 2000. RLP explained the origins of the amnesty process as:

58 Amnesty International, *Uganda: First Steps to Investigate Crimes Must be Part of Comprehensive Plan to End Impunity*, Public Statement, AI Index: AFR 59/001/2004 (30 January 2004); Amnesty International, *Uganda: First Ever Arrest Warrants by International Criminal Court – a First Step Towards Addressing Impunity*, AI Index: AFR 59/008/2005 (14 October 2005); International Centre for Transitional Justice, *Ugandan Rebel Leaders Indicted: First ICC Indictments Offer Hope of Justice and Accountability for Uganda*, Press Release (7 October 2005); Human Rights Watch, *ICC: Investigate All Sides in Uganda: Chance for Impartial ICC Investigations into Serious Crimes a Welcome Step* (4 February 2004).

59 Refugee Law Project, *Position Paper on the Announcement of Formal Investigations of the Lord's Resistance Army by the Chief Prosecutor of the International Criminal Court and its implications on the search for peaceful solutions to the war in Northern Uganda* (28 July 2004).

60 *Uganda Government Must Fulfil Its Responsibility to Protect Civilians in War-Torn North*, Oxfam Press Release (27 October 2005).

‘The initiative for creating an amnesty came from within this region, spearheaded by the religious and cultural leaders, and was a clear rejection of a failed military approach to ending the war. The fact that the Amnesty Law was in keeping with wishes of the victims of conflict, rather than by perpetrators trying to negotiate their own safety, is a crucial aspect of the Amnesty.’⁶¹

Equally, however, problems have been reported in implementing the amnesty process. In particular, allegations have been made that some reporters have been absorbed into the army. Challenges with reintegration of reporters back into their communities have also been reported in addition to tensions within communities over the assistance provided to reporters.⁶² Furthermore, as a matter of international law, state practice demonstrates a trend away from the granting of amnesty for crimes under international law. In *Prosecutors v Morrison Kallon*, the Appeals Chamber of the Special Court for Sierra Leone held that, there is a ‘crystallizing international norm that a government cannot grant amnesty for serious violations of crime under international law’.⁶³

However, in April 2006, the Amnesty Amendment Bill 2003 was passed to ‘deny amnesty to leaders of rebellion [against the government of the Republic of Uganda]; and to provide for the grant of amnesty to persons abducted, those coerced into rebellion and those who apply for amnesty in reasonable time, in good faith and who have demonstrated repentance’.⁶⁴ According to a newspaper report, the Bill empowers the Minister of Internal Affairs, on the advice of the security services, to name the individuals excluded from the ambit of the amnesty process by statutory instrument, subject to the approval of Parliament.⁶⁵

The debate on the amnesty process is closely linked to support for the use of traditional justice processes.⁶⁶ The traditional justice process broadly involves an investigation of the dispute, an admission of guilt, and a verdict issued by the elders. Where an admission and finding of guilt are made, the family of the perpetrator must pay the family of the victim. Although ‘welcome ceremonies’ have been held, as it is currently framed, it is unclear whether the traditional justice system has and can be used to address crimes under international law. In this respect, the Prosecutor has stated that:

‘Under the Rome Statute, the Prosecutor has the responsibility to investigate and prosecute serious international crimes taking into account the interests of victims and justice. I am mindful of traditional justice and reconciliation processes and sensitive to the leaders’ efforts to promote dialogue between different actors in order to achieve peace. The Prosecutor has a

61 Refugee Law Project, *Whose Justice? Perceptions of Uganda’s Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation* (February 2005) at 6; see also, Justice Resources, *Law and Disorder: The Impact of Conflict on Access to Justice in Northern Uganda* (November 2004) at 52.

62 *Ibid.*, at 14.

63 Case no SC5L 2004 15 AR 72, 13 March 2004.

64 Object of The Amnesty (Amendment) Bill 2003.

65 ‘No Amnesty for Rebel Leaders’, *Daily Monitor* (19 April, 2006).

66 Liu Institute for Global Issues, Gulu District NGO Forum and Ker Kwaro Acholi, *Roco Wat I Acoli: Restoring Relationships in Acholi-Land: Traditional Approaches to Justice and Reintegration*, September 2005.

clear policy to focus on those who bear the greatest responsibility for the atrocities committed. I also recognise the vital role to be played by national and local leaders to achieve peace, justice and reconciliation.’⁶⁷

Moreover, as over 80 per cent of the LRA are reported to have been abducted as children,⁶⁸ a number of prominent individuals and organisations in Uganda argue that punishment would not be appropriate as individuals who were abducted as children are viewed by many as victims and not perpetrators.⁶⁹

Given the debates on the perceived disjuncture between the ICC, the amnesty, and traditional justice processes, a Ugandan-based NGO, Justice Resources, has noted that:

‘Whatever the outcome of the current tensions, it is imperative, that the government, through the formal ambit of the amnesty law should demonstrate that alternative processes are viable and would meet basic requirements for justice and reconciliation, acceptable to communities and victims.’⁷⁰

The Ugandan Human Rights Commission has also recommended that, in the event of passage of the Amnesty Amendment 2003 Bill, ‘consideration could be given to appropriate alternative methods of justice so as to accommodate the wishes of those victims and the Northern Ugandan people who prefer community justice as a means of settling the conflict there’.⁷¹

Outreach activities conducted by the ICC in Uganda

In 2005, the ICC established a joint field office of the Registry and the Office of the Prosecutor in Kampala with the purpose of ‘facilitat[ing] the work of investigators as well as the Court’s activities in relation to defence, witnesses, victims and outreach’.⁷² In March 2006, two public information and outreach assistants joined the Kampala office and a senior outreach coordinator is currently being recruited.

In April 2005, a delegation from the Registry held meetings with government officials, press and NGOs in Kampala,⁷³ and organised a workshop in Entebbe for representatives of local councils in nine districts in northern Uganda with the purpose of providing ‘information about the ICC and to find mechanisms of cooperation to disseminate information with regard to outreach activities and participation of victims in court proceedings’.⁷⁴ In August 2005, workshops were held in Kampala and Gulu with NGOs and international organisations. Workshops for lawyers and legal aid

67 *Statement by the ICC Chief Prosecutor and the Visiting Delegation of Acholi Leaders from Northern Uganda*, Press Release, The Hague, ICC-OTP-20050318-95-En (18 March 2005).

68 CSOPNU, *supra* n 45.

69 Refugee Law Project, *supra* n 61 at 9.

70 Justice Resources Report, *supra* n 61 at 54.

71 Ugandan Human Rights Commission, *Sixth Annual Report*, 2003 at para 6.20.

72 ICC, *Report on the Activities of the Court* (16 September 2005) ICC-ASP/4/16 at para 10.

73 ICC, *ICC Newsletter*, No 4 (June 2005) at 1.

74 ICC, *ICC Newsletter*, No 5 (August 2005) at 9.

providers,⁷⁵ the Ugandan magistrates and judicial authorities,⁷⁶ and the media⁷⁷ were held in Kampala in October 2005. Leaders of the Acholi, Lango, Iteso and Madi communities also met with the Registry and the OTP in The Hague in March and April of 2005. Finally, in March 2006, the Court held ‘informative workshops’ with traditional and religious leaders in northern and eastern Uganda.⁷⁸

Materials on the ICC have been distributed in different locations in Uganda, including ‘Understanding the International Criminal Court’, a document which provides a simplified description of the Court and its functions. This document has been translated into Ateso. In addition, informative radio programmes on the ICC have been broadcast.

Beyond outreach conducted by the ICC itself, a number of NGOs, including the IBA, the Ugandan Human Rights Commission, the International Centre for Transitional Justice, Women’s Initiative for Gender Justice,⁷⁹ and Ugandan Coalition for the International Criminal Court (UCICC)⁸⁰ have engaged in outreach activities and consultations in Uganda.

Feedback from the IBA and ULS consultative workshop in February 2006

Against this background, the IBA held two consultative workshops in Kampala in February 2006. As the first consultation, the IBA met with a group of civil society organisations, traditional leaders, academics, the Human Rights Commission and the Amnesty Commission from northern Uganda to discuss the impact of the ICC’s investigations and arrest warrants in northern Uganda specifically.

This meeting fed into a three-day consultative workshop with almost 100 participants from a cross-section of civil society organisations, academics, lawyers and government officials organised in partnership with the Uganda Law Society (ULS). The purpose of this workshop was twofold: first, to explore the place of the ICC within the broader international justice system; and secondly, to provide a forum in which key stakeholders could discuss views and perspectives on the ICC’s role within the Ugandan context. In this respect, panel presentations were made by prominent Ugandan lawyers, including two ICC-approved defence counsel, representatives of the Human Rights Commission, the Amnesty Commission, the Directorate of Public Prosecutions, and civil society, in addition to: a senior legal adviser from the Registry of the ICC; a senior legal adviser at the ICTR; former defence counsel at the ICTR and the Special Panels for Serious Crimes in East Timor; a former prosecutor at the Special Court for Sierra Leone; a Commissioner on the African Commission on Human and Peoples’ Rights; and the Chief Investigator for the Sierra Leonean Truth and Reconciliation Commission.

75 This included a three-day workshop in partnership with the ULS on *International Criminal Law: Representing Clients before the ICC* and a workshop on *Providing Legal Assistance to Victims in Relation to the ICC* with Legal Aid Programme of ULS and the Uganda Association of Women Lawyers (FIDA).

76 ICC, *ICC Holds Seminar with Ugandan Judicial Authorities* (26 October 2005) available at www.icc-cpi.int/press/pressreleases/115.html.

77 A workshop was held in partnership with the Institute for War and Peace Reporting on covering the ICC.

78 ‘ICC Officials Meets Clerics’ (6 April 2006), *New Vision*; ‘ICC Meets NGOS, Northern Leaders Over Kony’ (5 April 2006), *New Vision*.

79 See, www.iccwomen.org for a full outline of Women’s Initiative for Gender Justice’s activities in Uganda.

80 The UCICC recently issued a *Report on the Sensitization Workshops in Northern and Eastern Uganda; Held in the Districts of Gulu, Kitgum, Lira and Soroti*. 24-31 March 2006.

Rather than providing formal training, the workshop was structured as a consultative process. Time was allocated each day for breakout sessions and the agenda adjusted to reflect the progress and direction of the workshop. From the IBA's perspective, using the workshop as a platform on which to raise views and opinions on the ICC was crucial to understanding how the IBA might develop its work in Uganda. By bringing together a broad cross-section of society, the workshop also gave participants the opportunity to hear from sectors with which they might not routinely engage.

The agendas annexed to this report outline the thematic focus of the workshop. Although in a workshop of over 100 participants, it is difficult to draw absolute conclusions or portray a consensus reached, the following reflects the key issues of concern raised at the workshop. The views advanced in the remainder of this section are not necessarily those of the IBA but attempt to convey the diverse perspectives of the workshop participants. As such, this section is included to stimulate debate and increase awareness and understanding of views, perspectives, positions and opinions in situation countries.

As discussed at the beginning of this report, outreach in situation countries must not only involve the dissemination of general information on the Court but must also engage with the context in which the ICC is placed. In this respect, the themes addressed in this report highlight areas in which the Court and organisations such as the IBA might focus in future outreach activities in Uganda. More broadly, the feedback from workshops and consultations conducted by the IBA and other organisations in Uganda may also assist in developing and framing outreach programmes in future situations.

Importance of participation in and purpose of workshops

In Uganda, participants noted a sense of 'workshop overload' and a disdain for the amount of money spent on workshops without any clear purpose or follow-up. Rather than holding workshops in isolation, the suggestion was made that periodic workshops should be used as opportunities for reflection on past work and planning for future activities. A number of participants questioned how the issues raised at the workshop would be used, and how the participants would get feedback, particularly on any reports made to the ICC itself. Consultation in the design, implementation and follow-up to workshops appears to be a process which has not been prioritised in outreach activities to date, but may play an important role in ensuring the effectiveness of outreach programmes in Uganda. In this respect, while the representatives of organisations from northern Uganda expressed the view that the workshop was timely in providing a forum in which to review their collective position on the ICC, they noted that some of the other invitees from northern Uganda did not attend as they felt that, based on previous experience, it was unlikely that their views and opinions would be taken into account. The point was also made that the workshop should have been conducted by the ICC rather than the IBA as a first step (although the participation of the senior legal adviser from the Registry may have eased this tension somewhat).

Perceptions of the Court

Most who criticised the ICC did preface their comments with the caveat that they are not against the Court per se. Rather, their points were directed at the way in which the Court has functioned in the Ugandan context to date. In particular, the issue of arrest warrants is generally perceived to have had a detrimental effect on the security situation and the prospects for a peaceful resolution of the conflict.

In general, the critiques of the Court fell into the following categories:

Insufficient outreach by the Court itself

In our half-day consultation with northern organisations, a number of participants felt that the ICC should only have issued arrest warrants after an effective outreach strategy had been conducted with all key stakeholders, including the LRA. The failure to conduct outreach work and engage with the key stakeholders appears to have diminished trust and goodwill towards the Court quite considerably. The organisations from northern Uganda felt that the ICC now has many hurdles to overcome in order to secure their support. The suggestion was made that the ICC should engage in a dialogue with the stakeholders in northern Uganda on what the Court views as its achievements and shortcomings in Uganda.

Perception of the ICC as a political tool of the Ugandan Government

The ICC was repeatedly referred to as a political tool of the Ugandan State, following its failure to deal with the LRA militarily. Despite the allegations of crimes under international law by the Ugandan Government, three factors of the ICC's intervention in Uganda have given rise to the perception of bias and one-sidedness:

- the Prosecutor's announcement of the referral of the situation in northern Uganda to the ICC in a joint press conference with the Prosecutor Luis Moreno Ocampo and President Museveni;
- there is the perception that the ICC website implies that only the LRA is being investigated; and
- the Ugandan Government has reportedly made public statements to the effect that if the ICC finds any violations on the part of the UPDF (military forces), it will hold the perpetrators to account domestically.

Some participants felt that the Ugandan referral was being used by the ICC as a 'test case' to prove its viability, rather than motivated by achieving justice for victims and survivors of the conflict.

On this basis, a number of participants felt that the Ugandan referral did not meet the jurisdictional criteria of Article 17(1)(a) of the Rome Statute which provides that a case will be inadmissible 'unless the State is unwilling or unable to genuinely carry out the investigation or prosecution'. A number of participants, particularly from northern Uganda, felt that the domestic legal system (both formal and traditional) was competent to deal with the violations alleged but has not been used. In this respect, a number of suggestions were made that the domestic legal system must first be given the chance to work before the ICC initiates investigations.

Enforcement

A number of participants questioned how the ICC plans to collect evidence to support its case against the five LRA leaders and enforce the arrest warrants when it has to rely on the governmental authorities that have already failed to defeat the LRA militarily. Some participants from northern Uganda suggested that the ICC should set a timeframe in which it expects to enforce the arrest warrants and institute a clear plan for future action in the event that it does not gain custody of the LRA leaders. In this respect, a number of participants felt that the ICC cannot expect communities to wait for justice indefinitely as they have for 20 years of conflict.

Broader issues that impact on the ICC's intervention

Place of the ICC within the Ugandan context

At the workshop, the ICC was initially discussed by a number of participants as a 'northern problem'. However, over the course of the workshop, the importance of the ICC nationally both with regard to the specific investigations and arrest warrants and in terms of its potential to trigger law reform and combat impunity was brought out.

Within the context of Uganda, the relationship of the ICC to traditional mechanisms and the amnesty process was raised as a central issue. On traditional justice mechanisms, some participants felt that the ICC did not respect or take into account cultural and/or traditional practices. In this respect, the Prosecutor's statements about the complementary nature of the two processes do not appear to be well known.

On the amnesty process, a number of participants felt that it was conceived as a practical way in which to bring an end to the violence and that it had been working to some extent before the arrest warrants were issued. As discussed above, the amnesty law arose out of lobbying by civil society in northern Uganda in contrast to many domestic amnesties which are self-imposed by outgoing leaders. However, following the arrest warrants, the number of returnees and applications for amnesty had dropped dramatically. As outlined in the recommendations made at the workshop, support appears to remain for the amnesty process.

While discussion was focused on the relationship of the ICC to the amnesty process and traditional justice mechanisms, in assessing peace and justice strategies as a whole, further consideration could be given to the benefits and limitations of amnesty and traditional justice mechanisms as well as their interrelationship and relationship to formal justice mechanisms, at the national, regional and international level.

Locating the ICC within a broader landscape of peace and justice

Although a number of the panel presentations related to the relationship of the ICC to broader peace and justice strategies, the ICC and the amnesty process and traditional justice mechanisms were often the focus of discussion on options available to deal with the conflict in Uganda.

On the ICC specifically, much greater outreach is required to emphasise that neither the ICC nor the amnesty process offer comprehensive solutions to dealing with the conflict. Secondly, as a means of managing expectations, outreach on the ICC should also include a focus on the small but

interconnected role of the ICC in a much broader landscape of local, national, regional, and international options to addressing the conflict. In particular, a clear mapping of the ICC's place in the international justice schema would also highlight forums which deal with state responsibility, an issue raised frequently over the course of the workshop.

Definitions of peace and justice

A recurrent theme throughout the workshop related to the need to understand and define what is meant by justice. For example, participants questioned whether it is social, economic, distributive, retributive or restorative. Sequencing the achievement of peace and justice was also discussed from the perspective of whether peace must be achieved before justice can be considered or whether it is possible to have a holistic and complementary approach to both objectives.

Recommendations

The following recommendations were made by groups of participants in the final breakout session. On all ICC-related activity, the groups recommended the participation, consultation, and involvement of key stakeholders, interest groups, and local communities.

Implementing legislation

A number of participants recommended that the Rome Statute should be implemented into domestic law. Implementing legislation was viewed as important as a deterrent to impunity; to resolve inconsistencies between the Rome Statute and domestic law; and to promote criminal law reform. For example, some groups noted that implementing legislation would allow for the enactment of a definition of rape and crimes such as 'forced disappearance'; and the raising of the criminal age of responsibility from 12 to 18.

In the discussion on implementation, three challenges were raised by all of the groups: the immunity provided to the Head of State under the Constitution; retrospectivity; and the relationship of the Rome Statute to the Amnesty Act of 2000.

Beyond issues requiring specific address during the process of implementation, a number of other issues were highlighted by the groups. Although not required to implement the Rome Statute into domestic law, some groups recommended that the following issues be considered:

- the disjuncture between the detention facilities in The Hague and the lack of internationally-acceptable minimum standards in prisons in Uganda;
- the lack of provision for the death penalty within the Rome Statute was also seen as an opportunity to discuss the imposition of the death penalty in Uganda; and
- the recommendation was also made that at the point of implementation, the possibility of establishing a special chamber or division of the high court to deal with war crimes, crimes against humanity and genocide could be explored.

Taking the implementation process forward: Although organisations such as the Human Rights Commission and the UCICC have already submitted comments to the Committee on Legal and Parliamentary Affairs, some groups suggested that implementation should take place in a more inclusive way. Specifically, the following recommendations were made:

- civil society organisations should disseminate information on the ICC and seek consensus as to whether Uganda should implement the Rome Statute;
- the legal community should analyse the relationship of the Rome Statute to domestic law and on this basis make recommendations to Parliament on any necessary amendments to the International Criminal Court Bill 2004;
- in addition to lobbying Parliament on the need for implementing legislation, outreach initiatives should be conducted with parliamentarians. The possibility of holding a workshop with the Committee on Legal and Parliamentary Affairs, the Ministry of Justice, and the Directorate of Public Prosecutions on the ICC was also recommended; and
- if the Rome Statute is implemented into domestic law, workshops could be held with stakeholders, interest-based groups and affected communities to sensitise them to the changes. Broader outreach strategies such as opinion pieces in newspapers (Op-Eds) and radio programmes should also be used to explain the meaning of implementation.

Repeal the bilateral agreement with the United States

A number of groups recommended that the bilateral agreement between the United States and Uganda should be repealed.

Education and sensitisation programme on the ICC

All of the groups recommended the development of sensitisation, education and training programmes on the ICC by a range of actors including civil society organisations, the ULS, the law faculty, elders and traditional leaders, religious leaders and the international community.

Some groups recommended that organisations from different parts of Uganda should meet on a regular basis.

A number of groups recommended that research should be conducted into perceptions of the ICC within different sectors of the population.

The translation of ICC documents into local languages was also recommended, particularly of short documents which provide a general overview of the Court. From the IBA's perspective, it may also be helpful for the ICC to produce material which summarises the three main constitutive documents of the ICC (Rome Statute; the Rules of Procedure and Evidence, and the Elements of Crimes) and explains their interrelationship.

Continuation of the amnesty process

A number of groups recommended the continuation of the amnesty process. Although there was a considerable difference of opinion, over the course of the workshop the possibility of requesting the Prosecutor to withdraw or stay the arrest warrants was raised. Other groups suggested that the ICC should only deal with commanders and leaders, and the amnesty law should cover other potential cases. A number of individuals and groups felt that an express commitment should be made not to prosecute abducted children and adults abducted as children. It was suggested that the Government could make such a commitment over the radio and the ICC could back it up.

Beyond the ICC, the recommendation was also made that the Government should not use anti-terrorism legislation where the amnesty law could apply.

Need for broader peace, justice and conflict resolution mechanisms

Groups also made the recommendation that broader peace, justice and conflict resolution tools were needed. Examples given were, 'truth commissions', greater use of the traditional processes, and peace-building strategies.

Some groups recommended that justice and accountability should be dealt with holistically. In this respect, one group suggested that the crimes committed since 2002 should be documented in order to ensure impartiality and balance in the ICC investigations. Another group felt that the Government should show political will and commitment to dealing with impunity as a whole. In this respect, a number of suggestions were made as to how to deal with accountability domestically, including the provision of training in the prosecution of war crimes; police training on human rights, investigations and law enforcement; and the development of public interest litigation.

Part III

Feedback from consultative workshops in India

The ICC currently enjoys very little support on the Asian continent; only five countries have ratified the Rome Statute: Afghanistan, Cambodia, Mongolia, Republic of Korea, and East Timor. In the South Asia region specifically, only Bangladesh has signed the Rome Statute.⁸¹ India has not signed or ratified the Rome Statute but did sign a bilateral immunity agreement with the United States in 2002.

As an international and regional leader, India's position on the ICC may have significant influence on the attitudes of neighbouring countries towards the Court and its underlying principles. In this respect, the IBA decided to hold two workshops on the ICC as a means of engaging with current debates on the ICC in India and in the region as a whole. As discussed at the outset of this report, as the work of the Court progresses, investigations will inevitably extend to other regions. External relations and outreach programmes outside of the current situations under investigation will play an important role in framing attitudes towards the Court. They may also avoid or minimise the formation of negative perceptions of the ICC based on distorted or misrepresented information. Particularly in responding to concerns about the jurisdiction of the Court, emphasis on the principle of complementarity may allay fears about the ICC's jurisdiction, and encourage the strengthening of domestic legal systems to pre-empt any potential investigation by the Court.

At the end of February 2006, the IBA held a workshop on the ICC in partnership with the Bar Association of India and the Criminal Justice Society of India, which was attended by 60 lawyers. Panellists included the Chairperson of the Law Commission of India; the President, Vice-President and Honorary Secretary of the Bar Association of India; the President and Secretary of the Criminal Justice Society of India; the Vice-President of the Indian Society of International Law; the Vice-President of the Bar Association of India and former President of the Supreme Court Bar Association; and the former Executive Secretary of the UN Diplomatic Conference Establishing the International Criminal Court.

A second roundtable discussion was also organised with the Indian Society of International Law. Presentations were made by the former Chief Justice of the Supreme Court of India and former Chairperson of the National Human Rights Commission; a senior advocate and the Deputy Editor of *The Hindu*, and short interventions by representatives of the legal community, civil society, and academia.

Prior to these workshops, a number of meetings have been organised on the ICC in India, including two visits by President Kirsch during which he was interviewed by national media.⁸² Since 2000, ICC-

81 For perspectives on the ICC in the Indian context, see Usha Ramanathan, 'India and the ICC' (2005) 3(3) *Journal of International Criminal Justice*.

82 See Siddarth Varadarajan, 'Living up to the Legacy of Nuremberg', *The Hindu*, 12 December 2005; Rakesh Bhatnagar, 'International Court Needs to Come Out of UN Control', *Times News Network*, 29 November, 2004.

India, a programme of Women's Research and Action Group, has been particularly active both in disseminating information and facilitating discussion on the ICC. At the outset, ICC-India focused on the relevance of the ICC to gender-based violence, although its work is now expanding to cover child rights and minority rights. In August 2005, ICC-India held a meeting on 'The International Criminal Court and India' in conjunction with Parliament Members' Forum on Human Rights.⁸³ Amnesty India is networking with bar associations, the judiciary, and parliamentarians at the district level to disseminate information on the ICC. Finally, the Indian Society of International Law includes a course module on the ICC in its Diploma Course in Human Rights and at its annual international law conferences in 2004 and 2005 sessions were held on the ICC. In 2005, President Philippe Kirsch was one of the eminent speakers.

Beyond a meeting organised by the Supreme Court Bar Association in 1998, the legal community as a whole has not focused on the ICC. However, in conjunction with the IBA, the Bar Association of India and the Indian Society of International Law are now considering ways in which to build on the momentum created at both workshops.

As with the Report on the workshops in Uganda, the following outlines the key issues on the ICC which were raised at both workshops in Delhi.

India and the ICC

At both workshops, the statements made by delegates of the Indian Government at the Rome Conference in 1998 were raised. At the time of the Rome Conference, the Head of the Indian Delegation, Dilip Lahiri, highlighted India's reservations on the ICC as based on 'the principles of complementarity, State sovereignty, and non-intervention in internal affairs of States, and that its Statute should be such as to attract the widest acceptability of States, with State consent as the cornerstone of the ICC jurisdiction'.⁸⁴ Mr Lahiri stated that India did not 'favour any inherent or compulsory jurisdiction for the ICC which dispenses with such an essential sovereign attribute'; found it 'inappropriate to vest such a competence, which pertains to States, in the hands of an individual prosecutor to initiate investigations *suo motu*'; and considered the power vested in the Security Council to refer cases to the ICC as potentially yielding 'political results at the expense of justice'. Finally, India made a formal proposal to include 'employing weapons of mass destruction'⁸⁵ and terrorism⁸⁶ as an independent crime.

Crimes under the Rome Statute and complementarity

A number of speakers at both workshops advocated the adoption of the crimes under the Rome Statute (war crimes, crimes against humanity and genocide) into domestic law. Based on the principle of complementarity, speakers noted that a strong and effective domestic legal system

⁸³ See, Saumya Uma, Women's Research and Action Group, *International Criminal Court and India: Responses to Queries Raised by Parliamentarians*, 2005.

⁸⁴ Statement by Mr Dilip Lahiri, Additional Secretary Ministry of External Affairs, India, (16 June 1998), www.un.org/icc/speeches/616ind.htm

⁸⁵ *India: Proposed Amendments to the Draft Statute*, A/CONF.183/C.1/L.76/Add.2 and Corr. 1.

⁸⁶ *Proposal Regarding Article 5*, A/CONF.183/C.1/L.27/Rev.1.

would render a case inadmissible before the ICC as India would be deemed willing and able to genuinely ‘carry out the investigation or prosecution’ under Article 17(1) (a) of the Statute.

Mr F S Nariman, President of the Bar Association of India, also pointed out that:

‘... the spirit of the Rome Statute is not so much in the actual establishment of the Court and the filling of its dockets with cases to be tried before it; its spirit lies rather in the encouragement it gives to national governments worldwide to put up for trial in their own national courts persons accused of genocide, war crimes and crimes against humanity. The Rome Statute has established what can be described as a “culture of legality”: its true success will only come when aversion to impunity gets internalised by the democratic legal systems of each ratifying nation State.’

As South Asia does not have a regional court or commission on human rights, criminal matters are seldom internationalised in India. In order to address any misconceptions in this respect, a number of speakers emphasised that the ICC was a ‘court of last resort’ and not a supranational institution which could potentially review decisions of national judicial bodies, such as the Supreme Court.

Within the discussion on complementarity, the functioning of the domestic legal system was debated, particularly at the second workshop which brought together practising lawyers, NGOs and academics. On the basis of the principle of complementarity, a number of speakers argued that India had little to fear in ratifying the Rome Statute due to the strength of its domestic jurisprudence. However, at the second workshop, the functioning of the legal system was contested by a number of representatives of the NGO community who pointed to the disparity between the rich jurisprudence in theory and its implementation in practice, framing the judicial system as in a state of collapse. The central example used to demonstrate this point was the communal rioting in the state of Gujarat in 2002. In spite of the thousands of deaths and displacement, civil society organisations argued that the legal system had only responded with one Supreme Court case, known as the *Best Bakery* case,⁸⁷ in which nine individuals were convicted.⁸⁸ They argued that this case should not be used to demonstrate the strength of the Indian legal system but should highlight its failings in only producing one symbolic case out of the events that took place in Gujarat.

Sovereignty and jurisdiction

In response to the Indian Government’s objections to the powers of the independent Prosecutor, speakers focused on checks and balances on the Prosecutor built into the Rome Statute. In particular, panellists emphasised that in cases where the Prosecutor seeks to initiate an investigation *proprio motu*, Article 15(3) of the Statute provides that:

⁸⁷ *Zahira Habibullah Sheikh & Anr v State of Gujarat and Ors* (2004) 4 SCC 158 (in the subsequent 2006 judgment, the Supreme Court describes the facts of the case as ‘the basic focus was on the absence of an atmosphere conducive to fair trial. Zahira who was projected as the star witness made a grievance that she was intimidated, threatened and coerced to depart from the truth and to make a statement in Court which did not reflect the reality. The trial Court on the basis of the statements made by the witnesses in Court directed acquittal of the accused persons’. The Supreme Court ordered a retrial of the accused under the jurisdiction of the High Court of Mumbai on the basis that the ‘justice delivery system’ had been subverted). In a second Supreme Court case decided after the workshop, *Zahira Habibulla H Sheikh & Anr v State of Gujarat & Ors*, AIR 2006 SC 1367 (2006), Zahira was found in contempt of court.

⁸⁸ *The State of Gujarat v Rajubhai Dhamirbhai Baria and Ors*, Session Case No 315 (24 February 2006) (nine individuals were sentenced to life imprisonment following the retrial).

‘If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorisation of an investigation, together with any supporting material collected.’

Thus, the final authorisation must come from a bench of three judges in the Pre-Trial Chamber and is not a matter for unilateral determination by the Prosecutor.

In addition, under Article 19, the Pre-Trial Chamber may end an investigation where it determines that the Court does not have jurisdiction to hear the case. Conversely, if the Prosecutor decides not to investigate, under Article 53(3) (a) the state making the referral or the Security Council can request the Pre-Trial Chamber to review the decision of the Prosecutor not to proceed with an investigation. In order to issue an arrest warrant in the course of an investigation, the Prosecutor must make an application to the Pre-Trial Chamber under Article 58. Similarly, if the Prosecutor wishes to prosecute, the Pre-Trial Chamber will, under Article 61, hold a hearing to ‘confirm the charges on which the Prosecutor intends to seek trial’.

Constitutional issues

Concern was expressed that conflict might exist between Article 361 of the Indian Constitution which provides immunity to the President and the Governor, and Article 27(2) of the Rome Statute which provides that the terms of the Statute apply irrespective of the official capacity or any immunities otherwise available under national or international law. Speakers pointed out that this issue was common to many nations which had ratified the Rome Statute; many have either amended their constitutions to recognise the jurisdiction of the ICC as set out by the Rome Statute⁸⁹ or adopted purposive interpretations of the constitution as not applying to the crimes provided for by the Rome Statute.⁹⁰

Terrorism

Speakers also addressed the perspective that ratification of the Rome Statute would impose higher obligations on India than neighbouring states that had not ratified, with the effect that India would be restricted in the means available to deal with internal conflicts and hostile neighbours. In this respect, speakers underscored that the Rome Statute only prohibits conduct which is already criminalised under existing international law, meaning that by becoming a state party to the ICC, India would not be giving up rights to which it would otherwise be entitled.

Speakers also pointed out that although terrorism is not included as an independent crime within the crimes provided for by the Rome Statute – largely because of a lack of consensus on what constitutes terrorism – almost all the alleged ‘terrorist acts’ currently committed in India or against India do fall within the definition of genocide, war crimes or crimes against humanity. Thus, they

⁸⁹ For example, France and Luxembourg.

⁹⁰ For example, Azerbaijan, Brazil, Canada, Cambodia, Finland, New Zealand, Norway, Portugal, Spain, Ukraine and the United Kingdom. For more information on this issue, please see, Roy Lee (ed), *States’ Responses to Issues Arising from the ICC Statute: Constitutional, Sovereignty, Judicial Cooperation and Criminal Law* (Transnational Publishers, forthcoming 2006).

could still be dealt with before the ICC. In addition, one speaker pointed out that the Review Conference will be held in 2009, at which point the inclusion of terrorism may be reconsidered. India's position in this regard would be strengthened as a State Party.

Bilateral agreement

On India's bilateral immunity agreement with the United States, Mr K T S Tulsi, President of the Criminal Justice Society, commented on the adverse implications of the agreement:

'When one of the world's most powerful governments shows contempt for international law, it teaches others to do the same. India, as being the largest democracy must take the responsibility for speaking out clearly and firmly on the international arena about the rule of law, both within and outside its domestic jurisdiction.'

Role of the legal community on the ICC

Finally, speakers emphasised the contribution Indian lawyers could make to the development of the jurisprudence of the ICC through ratification. First, although Indian lawyers can already apply to become defence counsel or legal advisers at the Court, only state parties can nominate judges under Article 36. Secondly, speakers pointed to the influence India could have on the Court's evolution as a whole through participation in the Assembly of States Parties.

The Bar Association of India (BAI) with the support of the IBA has now established a working group of lawyers, academics and members of civil society to consider further the significance of the ICC within the Indian context. BAI and the IBA will hold a follow-up workshop towards the end of this year.

Part IV

Conclusion

The IBA recently created a dedicated section on its website which provides full details of the ICC Monitoring and Outreach Programme, available at:

www.ibanet.org/humanrights/ICC_Monitoring_and_Outreach_Project.cfm.

Following the workshops in Uganda and India, the IBA is supporting working groups of practising lawyers, civil society, and academics which have been established by the ULS and the BAI respectively to consider the issue of complementarity in greater detail. As complementarity forms a central element of the outreach component to the programme, the IBA also held a session on the role of bar associations in advancing ratification and implementation of the Rome Statute at the Annual Bar Leaders' Conference in May 2006 and is preparing guidelines for bar associations working on complementarity.

Over the course of the year, the IBA also plans to hold a follow-up consultative workshop in northern Uganda and is exploring possible outreach activities in Sudan. In addition, the IBA has received funding from the JEHT Foundation to hold a workshop on the ICC with US bar leaders in New York in September 2006. This workshop will follow the IBA Annual Conference in Chicago, at which a session on the ICC will be held.

Analysis and summaries of significant issues before the ICC and reports arising out of the IBA's outreach activities will continue to be distributed throughout the year.



the global voice of
the legal profession



INTERNATIONAL CRIMINAL COURT

HOTEL AFRICANA

KAMPALA

9 – 11 FEBRUARY, 2006

Aims and Objectives of the Workshop

Following the issuance of arrest warrants over five leaders of the Lord's Resistance Army, the work of the International Criminal Court (ICC) has had an immediate impact within Uganda. The establishment of the ICC also has broader significance. First proposed in 1919, political support was precipitated by the Security Council's establishment of the International Criminal Tribunals for the Former Yugoslavia and Rwanda and the wider recognition of the importance of international justice for serious international crimes. However, as the Prosecutor has recently stated the focus of investigation and prosecution efforts is on, "those who bear the greatest responsibility for the most serious crimes. It is simply not feasible to bring charges against all perpetrators."¹ As such, national and regional bodies will continue to play a key role in combating impunity for serious international crimes.

Against this background, the purpose of this workshop is two-fold: first, the workshop will build on previous seminars conducted by the ICC itself to examine in greater detail the procedural and substantive elements of the Rome Statute and the role of defence counsel and victims' representatives, including discussion of practical issues such as the protection of victims, witnesses and human rights defenders. Second, the workshop will consider the role lawyers, civil society organisations, government institutions and community leaders can play in promoting a holistic approach to accountability for serious international crimes in Uganda. In this respect, the workshop will locate the ICC within the broader context of international justice mechanisms. Particular attention will be paid to the work of the *ad hoc* international criminal tribunals, the African Commission and newly established Court on Human and People's Rights as well as considering ways in which to resolve potential tensions between peace and justice. The workshop will then look at ways in which the ICC can act as a catalyst for wider strategies to combat impunity for serious international crimes in Uganda. In particular, the workshop will discuss prospects for transitional justice, ways in which to use the jurisprudence of the ICC and other

¹ ICC, Office of the Prosecutor, *Statement by Luis Moreno-Ocampo, Prosecutor of the International Criminal Court: Informal Meetings of Legal Advisers of Ministries of Foreign Affairs*, New York, 24 October 2005 at 5.

international and regional bodies before national courts, prospects for law reform and implementing legislation of the Rome Statute.

The workshop aims to build on existing knowledge and expertise on the ICC and international justice for serious international crimes. Based on the outcome of the workshop, the IBA will report back to the Court itself with key findings and recommendations.

Background to the International Bar Association and its Programme on the ICC

The IBA is the global law organisation for 25,000 individual legal professionals and 195 Bar Associations and Law Societies, including the Ugandan Law Society, and represents 192 countries. It provides a unique platform for professional development and legal education, strategy and networking. It promotes the exchange of information between lawyers and legal associations worldwide covering all areas of commercial law and public and professional interests. It supports the independence of the judiciary and the right of lawyers to practice their profession without interference and is dedicated to the protection of human rights and a just rule of law throughout the world.

The IBA recently started an ICC Monitoring and Outreach Project funded by the MacArthur Foundation. The Project contains two central components. First, as the work of the ICC progresses, an IBA representative will attend the proceedings, focusing particularly on the fair trial rights of the accused. Second, over the course of the Programme, the IBA will conduct a series of workshops in Uganda and is also exploring the possibility of meetings in Sudan and India with the view to building on existing knowledge and expertise on the ICC. The findings and recommendations of the workshops will be fed back to the Court itself. Sessions on the ICC will also be held at the IBA's Bar Leaders Conference and Annual IBA Meeting.

Further Information on the Issues Covered at the Workshop

At the workshop, each participant will receive an information pack for further reading which will include the material (official ICC documents, academic articles, and NGO reports) on the key themes explored in the workshop.

DAY 1

THE ICC AND THE DEVELOPMENT OF INTERNATIONAL JUSTICE

9 – 9.30 **REGISTRATION AND COFFEE**

9.30 – 10.15 **WELCOME NOTE**

10.15 – 11.30 **THE MANDATE HISTORY AND BACKGROUND TO THE ICC**

This session will begin with an overview of the mandate of the ICC before exploring the history and background to its establishment, including discussion on the International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone.

11.30 – 11.45 **COFFEE**

11.45 – 1 **THE RELATIONSHIP BETWEEN PEACE AND JUSTICE: COMPARATIVE**

Almost every society undergoing some form of transition has been faced with the question of how to deal with the relationship between peace processes and the need for justice for serious international crimes. This session examines the various ways in which the relationship has been and can be addressed through the use of comparative case-studies.

1 – 2.15 **LUNCH**

2.15 – 4 **BREAK-OUT SESSION: THE RELATIONSHIP BETWEEN PEACE AND JUSTICE IN THE UGANDAN CONTEXT**

Within this session, participants will divide into groups of ten. The groups will first outline the key issues involved when considering how peace and justice relate in the Ugandan context. The groups will then make recommendations of how any tensions between the two issues can be minimised, including suggestions on roles that international actors, government, the legal community and civil society can play in contributing to a resolution.

4 – 4.15 **COFFEE**

4.15 – 5 **THE RELATIONSHIP OF THE ICC TO CURRENT DEVELOPMENTS ON INTERNATIONAL JUSTICE**

This session considers the complementary relationship of the ICC to current developments on international justice at the international, regional and domestic level. Selected case-studies will be used, such as the recent decision of the International Court of Justice in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* as well as consideration of the relationship of the ICC to the new African Commission and Court on Human and People's Rights.

5 – 5.30 **WRAP UP AND PLAN FOR THE NEXT DAY**

DAY 2

THE ICC WITHIN THE UGANDAN LEGAL CONTEXT

9 – 9.15 **REGISTRATION**

9.15 – 11 **THE POTENTIAL FOR THE ICC TO STRENGTHEN ACCOUNTABILITY FOR SERIOUS INTERNATIONAL CRIMES AT THE DOMESTIC LEVEL**

The ICC can only investigate and prosecute individuals who bear the greatest responsibility for serious crimes of international concern. The limited mandate and capacity of the ICC will mean that as an institution it can only ever deal with a small number of cases. That said, the significance of the establishment of the ICC and the initiation of investigations in Uganda may mean that the Court can act as a catalyst to addressing past and current serious international crimes within Uganda. This session considers the ways in which the ICC can have a broader impact on international justice in Uganda, looking at strategies to combat impunity for serious international crimes; the potential for the establishment of transitional justice processes; and ways in which to use the jurisprudence of the ICC as well as the *ad hoc* tribunals in domestic courts.

11 – 11.15 **GROUP PHOTO**

11.15 – 11.30 **COFFEE**

11.30 – 1 **PROTECTION OF WITNESSES, VICTIMS AND HUMAN RIGHTS DEFENDERS**

Article 68 of the Rome Statute raises the issue of victim and witness protection. This session will address the parameters and realistic expectations of protection not only for victims and witnesses but also for human rights defenders, including lawyers.

1 – 2.15 **LUNCH**

2.15 – 3.15 **COMPARATIVE ASSESSMENT OF IMPLEMENTATION LEGISLATION**

This session first considers the importance of implementing legislation, particularly in dualist legal systems and provides an overview of states which have adopted implementing legislation. The legislation process in specific countries will then be examined, highlighting the (in)consistencies with the Rome Statute, the challenges involved and strategies employed to secure legislation and the participation and contribution of broader civil society.

3.15 – 3.30 **COFFEE**

3.30 – 5 **BREAK OUT SESSION: PROPOSED IMPLEMENTING LEGISLATION IN UGANDA**

Divided into groups of ten, participants will outline the importance of implementing legislation in the Uganda context and the potential problems that could arise, particularly with regard to the success of

the ICC investigations, in the absence of legislation. Groups should then compare the text of the proposed implementing legislation to the terms of the Rome Statute and highlight any gaps and inconsistencies between the two documents. Finally, the groups should identify any substantive, procedural and constitutional barriers such as the Amnesty Act and the potential role of the legal community and civil society in promoting and contributing to the adoption of implementing legislation.

5 – 5.30

WRAP UP

DAY 3

LEGAL REPRESENTATIVES AT THE ICC (DEFENCE COUNSEL AND VICTIMS' REPRESENTATIVES)

9 – 9.30 **REGISTRATION**

9.30 – 11 **RULES ON JURISDICTION, ELEMENTS OF CRIMES AND
ADMISSIBILITY**

This session will address the jurisdiction of the ICC, the elements of crimes, and the rules on the admissibility of the case. The principles of international criminal law incorporated into the Rome Statute will also be discussed.

11 – 11.15 **COFFEE**

11.15 – 12.15 **THE PROCEDURAL ELEMENTS OF ROME STATUTE AND THE RULES
OF PROCEDURE AND EVIDENCE**

This session will first address how a case comes before the Court and the roles of each organ of the Court in this respect. The session will then look at selected procedural rules contained within the Rome Statute and the Rules of Procedure and Evidence. As the 'legal' system of the ICC draws on elements of adversarial and inquisitorial systems, features unfamiliar to common law systems such as Uganda will be discussed, including differences in the role of judges and the relationship between the Prosecutor and the Pre-Trial Chamber.²

12.15 – 1.30 **LUNCH**

1.30 – 2.45 **THE ROLE OF DEFENCE COUNSEL AT THE ICC AND THE
RELATIONSHIP TO VICTIMS' REPRESENTATIVES**

This session will address the role of the respective legal representatives at the Court, namely defence counsel and victims' representatives. As victim participation in criminal proceedings is unfamiliar to common law systems which do not provide for *constitution de partie civile* as in a number of civil law systems, the impact of victim participation on the role of defence counsel will be considered.

2.45 - 3 **COFFEE**

3 – 5 **BREAK-OUT SESSION ASSESSING THE ICC'S ROLE IN UGANDA AND
RECOMMENDATIONS FOR THE FUTURE**

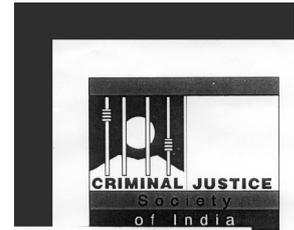
In this break-out session, groups can discuss their assessment of the ICC's work in Uganda so far, and areas in which the Court could develop its work further. The groups should then identify the roles government; traditional leaders; other international organisations based in Uganda; civil society; and the legal community have played in engaging with the ICC and make recommendations as to future

² Particularly under Articles 15, 53 and 56 of the Rome Statute.

roles they can play. In making recommendations, the issues raised in the previous session should be built on and suggestions made on ways in which to strengthen domestic accountability processes and strategies for building capacity in this regard. Examples include, strengthening the judiciary on prosecuting international crimes; assisting the courts on developments on international law through amicus curiae/third party interventions; and broader training/courses for lawyers and law students on international criminal, human rights and humanitarian law.

5 – 5.30

WRAP UP



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ROUNDTABLE ON THE INTERNATIONAL CRIMINAL COURT

AGENDA

HOTEL INTERCONTINENTAL, THE GRAND, DELHI

25 FEBRUARY 2006

Initiative supported by The John D. and Catherine T. MacArthur Foundation

Aims and Objectives of the Workshop

First proposed in 1919, political support for an International Criminal Court (ICC) gained momentum following the Security Council's establishment of the International Criminal Tribunals for the Former Yugoslavia and Rwanda and the wider recognition of the importance of international justice for serious international crimes. Since the Rome Statute establishing the ICC entered into force in 2002, the Court has made significant progress in operationalising its mandate to "exercise its jurisdiction over persons for the most serious crimes of international concern."¹ The Court has opened three investigations in the Democratic Republic of Congo, Darfur, Sudan and Uganda and the Prosecutor has indicated that seven other situations are being considered.² The Pre-Trial Chamber II has also issued five arrest warrants against leaders of the Lords' Resistance Army in Uganda³ and the Pre-Trial Chamber I recently accorded persons defined as 'victims' under the Rules of Procedure and Evidence, certain representational and evidential rights during the investigation phase of proceedings.⁴ The Prosecutor has applied for leave to appeal this decision.

Building on previous seminars and meetings on the ICC in India, this workshop aims to explore the significance of the establishment of the ICC in greater detail. In this

¹ Article 1 of the Rome Statute.

² ICC, Office of the Prosecutor, *Statement by Luis Moreno-Ocampo, Prosecutor of the International Criminal Court: Informal Meetings of Legal Advisers of Ministries of Foreign Affairs*, New York, 24 October 2005 at 2.

³ The Pre-Trial Chamber II issued sealed arrest warrants on 8 July 2005. These were unsealed on 13 October 2005.

⁴ *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, and VPRS 6, Situation in Democratic Republic of Congo*, International Criminal Court, ICC-01/04-101 Public Redacted Version (17 January 2006). This decision was subsequently appealed by the Prosecutor, *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, and VPRS 6, Situation in Democratic Republic of Congo*, International Criminal Court, ICC-01/04-101 Public Redacted Version (17 January 2006).

respect, the workshop will locate the ICC within the broader landscape of international justice, considering the history and background to the establishment of the Court as well as its relationship to accountability processes at the national, regional and international level. Key aspects of the Rome Statute will also be discussed, including the jurisdiction of the Court, admissibility of cases and the types of crimes that can be prosecuted. Finally, the workshop will consider the role lawyers can play in promoting ratification of the Rome Statute, providing expert analysis of the compatibility of existing domestic laws with the Rome Statute and utilising the jurisprudence of the ICC and related international bodies to strengthen international justice mechanisms at the national level.

The workshop aims to build on existing knowledge and expertise on the ICC and international justice for serious international crimes. Based on the outcome of the workshop, the IBA will report back to the Court itself with key findings and recommendations.

Background to the IBA and the ICC Evaluation and Outreach Programme

The IBA is the global law organisation for 25,000 individual legal professionals and 195 Bar Associations and Law Societies, including the Bar Association of India, and represents 192 countries. It provides a unique platform for professional development and legal education. It promotes the exchange of information between lawyers and legal associations worldwide covering all areas of commercial law and public and professional interests. It supports the independence of the judiciary and the right of lawyers to practice their profession without interference and is dedicated to the protection of human rights and a just rule of law throughout the world.

The IBA recently started an ICC Monitoring and Outreach Programme funded by the MacArthur Foundation. The Project contains two central components. Firstly, an IBA representative will monitor the work and the proceedings of the ICC, focusing particularly on the fair trial rights of the accused.¹ Second, over the course of the Programme, the IBA will conduct a series of outreach workshops in key countries with the view to building on existing knowledge and expertise on the ICC. The findings and recommendations of the workshops will be fed back to the Court itself. Sessions on the ICC will also be held at the IBA's Bar Leaders Conference and Annual IBA Meeting.

ONE DAY ROUNDTABLE

9 – 9.30 **REGISTRATION AND COFFEE**

9.30 – 10.15 **WELCOME NOTE**

Honorable Justice M. Jagannadha Rao, Chairperson of the Law Commission of India

F.S. Nariman, President of the Bar Association of India and former Co-Chair of the International Bar Association's Human Rights Institute

K.T.S. Tulsi, Senior Advocate and President of Criminal Justice Society of India

Lorna McGregor, ICC Programme Lawyer, International Bar Association

L. Bhasin, Honorary General Secretary of the Bar Association of India

10.15 – 11.30 **THE HISTORY AND BACKGROUND TO THE ICC**

This session will trace the history and background to the establishment of the International Criminal Court, including discussion on the International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone. The session will then look at the Rome Conference and the reasons cited by key states for choosing to ratify the Rome Statute.

Chair: L. Bhasin

Speakers:

Sidharth Luthra, Secretary of Criminal Justice Society of India and Advocate in Criminal Law

Overview of the place of the ICC within the international criminal justice system.

Roy Lee, Professor of Law (adjunct), Columbia Law School and former Executive Secretary of the United Nations Diplomatic Conference Establishing the International Criminal Court

Discussion of the negotiations on the International Criminal Court.

Stuart Alford, Barrister specialising in International Criminal Law
Discussion of the relationship of the *ad hoc* international criminal tribunals and the decision of the United Kingdom to ratify and implement the Rome Statute into domestic law.

11.30 – 11.45 **COFFEE**

11.45 – 1 **THE PLACE OF THE ICC WITHIN A LANDSCAPE OF INTERNATIONAL JUSTICE**

This session will explore how the ICC, as an institution, relates and contributes to other international justice mechanisms at the international, (such as the International Court of Justice and the UN system); regional (such as the European Court of Human Rights, the Inter-American System and the African Commission and newly established Court on Human and People's Rights) and national level (including a discussion on universal jurisdiction).

Chair: Lorna McGregor

Speakers:

Usha Ramanathan, Independent Writer on Issues of Law

Roy Lee

Overview of the relationship of the ICC to the International Court of Justice, the United Nations bodies and regional courts.

Stuart Alford

Discussion of the principle of complementarity under the Rome Statute and the role of national and hybrid courts in the development of international justice.

1 – 2 **LUNCH**

2 – 3.15 **THE MANDATE OF THE ICC AND KEY ASPECTS OF THE ROME STATUTE**

This session will provide an overview of the mandate of the ICC. In particular, roles and separation of powers between the respective organs of the Court; the jurisdiction of the Court and admissibility of cases; and the rules of procedure will be considered.

Chair: C.V. Govindaraj, Vice President, Indian Society of International Law

Speakers:

P.P. Rao, Vice-President of the Bar Association of India and Former President of the Supreme Court Bar Association
The jurisdiction of the ICC and the rules of admissibility of cases.

Stuart Alford

Overview of the Elements of Crimes

Roy Lee

Key Aspects of the Rules of Procedure

3.15 – 3.30 **COFFEE**

3.30 – 4.45 **UTILISING THE JURISPRUDENCE OF THE ICC**

The ICC can only investigate and prosecute individuals who bear the greatest responsibility for serious crimes of international concern. This session will consider the ways in which the jurisprudence of the ICC (as well as the decisions of *ad hoc* tribunals) can be used to strengthen accountability processes at the domestic level. Particular strategies will be considered such as strengthening the judiciary on prosecuting international crimes; assisting the courts on developments on international law through amicus curiae/third party interventions; and broader training/courses for lawyers and law students on international criminal, human rights and humanitarian law.

Chair: R.K.P. Shankardass, Vice-President of the Bar Association of India and Former President of the International Bar Association

Speakers:

K.T.S. Tulsi
Stuart Alford
Roy Lee

4.45 - 5 **WRAP UP**



ROUNDTABLE ON THE INTERNATIONAL CRIMINAL COURT
INTERNATIONAL CRIMINAL JUSTICE: THE CASE STUDY OF THE ICC

27 FEBRUARY 2006

3 – 6 PM

AGENDA

Initiative supported by The John D. and Catherine T. MacArthur Foundation

Aims and Objectives

The International Criminal Court (ICC) was established in 2002 to complement national judicial institutions in combating impunity for international crimes. In the four years since it was established, the Court has opened three investigations in the Democratic Republic of Congo, Darfur, Sudan and Uganda and the Prosecutor has indicated that seven other situations are being considered.ⁱ The Pre-Trial Chamber II has also issued five arrest warrants against leaders of the Lords' Resistance Army in Ugandaⁱⁱ and the Pre-Trial Chamber I recently accorded persons defined as 'victims' under the Rules of Procedure and Evidence, certain representational and evidential rights during the investigation phase of proceedings.ⁱⁱⁱ The Prosecutor has now appealed this decision.

Now that it is operational, this workshop aims brings together lawyers, academics and civil society organisations to discuss the role and significance of the ICC against a broader landscape of developments in accountability for the commission of international crimes at the national, regional and international level.

Background to the IBA and the ICC Evaluation and Outreach Programme

As a global legal organisation, the IBA has a membership of 25,000 individual legal professionals as well as 195 Bar Associations and Law Societies, representing 192 countries. The IBA provides a unique platform for professional development and legal education by promoting the exchange of information between lawyers and legal associations worldwide. It supports the independence of the judiciary and the right of lawyers to practice their profession without interference and is dedicated to the protection of human rights and a just rule of law throughout the world.

The IBA recently started an ICC Monitoring and Outreach Programme funded by the MacArthur Foundation. The Project contains two central components. Firstly, an IBA representative will monitor the work and the proceedings of the ICC, focusing particularly on the fair trial rights of the accused. Second, the IBA will conduct outreach work in key countries with the view to building on existing knowledge and expertise on the ICC, the findings and recommendations of which will be fed back to the Court itself. Sessions on the ICC will also be held at the IBA's Bar Leaders Conference and Annual IBA Meeting.

ⁱ ICC, Office of the Prosecutor, *Statement by Luis Moreno-Ocampo, Prosecutor of the International Criminal Court: Informal Meetings of Legal Advisers of Ministries of Foreign Affairs*, New York, 24 October 2005 at 2.

ⁱⁱ The Pre-Trial Chamber II issued sealed arrest warrants on 8 July 2005. These were unsealed on 13 October 2005.

ⁱⁱⁱ *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, and VPRS 6, Situation in Democratic Republic of Congo*, International Criminal Court, ICC-01/04-101 Public Redacted Version (17 January 2006). This decision was subsequently appealed by the Prosecutor, *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5, and VPRS 6, Situation in Democratic Republic of Congo*, International Criminal Court, ICC-01/04-101 Public Redacted Version (17 January 2006).

